IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6571 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUNDALAKAL S. SEMON & OTHERS

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR MC BHATT for Petitioners

MR LR POOJARI for Respondents.

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 18/02/2000

ORAL JUDGEMENT

This petition is filed for an appropriate writ, order or direction declaring the action of the respondents withholding of increments of the petitioners as illegal, void and by permanently restraining the Government from withholding an increment on the ground that the petitioners have not passed Gujarati language examination.

2. The petitioners were serving in Forest Department. They had not passed the examination prescribed under the Government Servants (Lower and Higher Standard) Gujarati Language Examination Rules,

1970. The rules were framed in exercise of proviso to Article 309 of the Constitution of India. Thus, the rules are statutory in nature. Under the provisions of the said rules, all the Gazetted as well as Non-gazetted government servants except Class IV employees whose mother tongue was not Gujarati were required to pass examination. Since the petitioners had not passed the said examination, increment was withheld. The said action was challenged in the petition. It was contended that the provisions of Rule 5 of the Rules are ultra vires and unconstitutional.

3. At the time of hearing of the petition, Rule was issued and ad-interim relief was also granted on certain terms and conditions. When the matter was called out for final hearing, attention of the Court was invited that another petition bearing Special Civil Application No.2340 of 1985 was also ordered to be heard along with this petition. The court had adjourned the matter with a view to ascertain as to what had happened to that petition.

4. Today when the matter was called out, my attention was invited by the learned counsel for the petitioners that Special Civil Application No. 2340 of 1985 had been disposed of by a learned Single Judge of this court by a judgment and order dt. November 7, 1996. The petition was allowed and Rule was made absolute. Going through the judgment delivered by the learned Single Judge, it is clear that what weighed with the learned Single Judge was that the increment was stopped without assigning any reason. In the opinion of the learned Single Judge, the action was, therefore, ex-facie illegal and arbitrary. The learned Single Judge has also observed that no reply was filed by the State. Though served, no body appeared on behalf of the respondents. The learned Single Judge, in the circumstances, stated;

> "There appears to be no reason for stopping the increment. Even if it is assumed that the increment was stopped for not passing the Gujarati Language Examination, it was necessary to give a show cause notice and pass appropriate order thereafter".

5. In view of the above observations, the learned Single Judge held that stopping the increment was unilateral and ex-facie illegal. The order was, therefore, set aside.

6. In my opinion, when statutory rules under the

proviso to Art. 309 of the Constitution of India have been framed by the State Government, unless and until such rules are held to be arbitrary, unreasonable, ultra vires or unconstitutional, they will have to be given effect to and they cannot be ignored. In my view, therefore, it was not necessary to issue notice and call for explanation or observe principles of natural justice. In my considered opinion, two classes of employees, namely (i) those who have passed the examination within the stipulated period and stipulated chances and (ii) those who have not passed the examination within the stipulated period and stipulated chances formed separate class. The former may be entitled to claim increment but the latter did not. Such classification can be said to be based on intelligible differentia and cannot be objected to. I, was, therefore, inclined to take different view directing the office to place the papers of this Special Civil Application before the Hon'ble the Chief Justice so as to refer the matter to a Division Bench, but at that stage, my attention was invited by the learned counsel for the petitioners to a decision of another learned Single Judge in Special Civil Application No.3581 of 1998 and companion matters decided on November 21,, 1998. In those matters, the learned Single has observed that in the facts and on the circumstances of the case, "it would be in the interest of justice to direct the State Government to give one more chance to the petitioners to appear at the examination so as to enable them to clear it". Since ad-interim relief was granted, the learned Single Judge continued the said interim relief and it was ordered that increment would not be withheld upto the end of the year 2001.

7. Mr. Prajapati, learned counsel for the petitioners stated that in the instant case also, at the time of admission of the petition, ad-interim relief was granted which is clear from the order passed at the admission stage. The counsel specifically stated that if such order is passed,and the petitioners will be protected upto particular period, the petition may be disposed of.

8. In the facts and on the circumstances of the case, in my opinion, ends of justice would be served, if ad-interim relief granted at the time of admission of the petition is continued and the State authorities are directed not to withhold the increment for not passing of the examination upto end of 2001 or within three years from today whichever is later for non-passing of examination, if the petitioners are not exempted under any rules from passing the Examination. The petition is

accordingly disposed of. Rule is made absolute to the aforesaid extent. Under the circumstances, no order as to costs.

Date:18/2/2000. ---
ccshah